

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
v.) No. 17-CR-10277 MLW (JGD)
)
ADRIAN CARLOS MALDONADO,)
)
Defendant.)

NOTICE PURSUANT TO PROCEDURAL ORDER

The United States and Defendant Adrian Carlos Maldonado, by and through their respective counsel, hereby provide the following notice pursuant to section 10 of the Court's Procedural Order filed on June 4, 2018 (ECF Dkt. 74):

1. Defendant is facing a mandatory minimum sentence of 120 months. His advisory guideline sentencing range ("GSR") is 120-135 months. Neither party will move for a departure or variance from the applicable guideline range or for a non-guideline sentence. Both the government and Defendant anticipate asking for a sentence of 120 months in prison.

2. The parties are in agreement that the PSR improperly counts the criminal sentence at paragraph 43 in the calculation defendant's criminal history calculation. The criminal sentence is time-barred pursuant to USSG § 4A1.2(e)(2) as it was imposed on January 24, 2004, and the government has no evidence indicating that the defendant joined the conspiracy within ten (10) years of that date. *See, e.g., United States v. Davis*, 312 Fed. Appx. 909, available on Westlaw, 2009 WL 430440 (9th Cir. 2009) (plain error for the district court to include prior convictions imposed more than ten years before the defendant joined the conspiracy); *accord United States v. Cuello-Frias*, 712 Fed. App'x. 900, 901–02 (11th Cir. 2017) (determination of ten-year window is based upon defendant's relevant conduct, but does not include conduct of other members of the

conspiracy before defendant joined the conspiracy); *United States v. Harris*, 534 Fed. Appx. 906, 908 (11th Cir. 2013) (“for the [prior] sentence to fall within the ten-year window, [the defendant] must have commenced participation in the instant conspiracy” within ten years of the date of imposition of the prior sentence); *United States v. Wallace*, 32 F.3d 1171, 1174 (7th Cir. 1994) (plain error under U.S.S.G. § 4A1.2(e)(2) to consider prior sentences dating back more than ten years from when defendant joined the conspiracy). The parties agree that resolution of this legal issue will have no impact on the calculation of Defendant’s criminal history category (“CHC”) or his advisory GSR.

3. Neither party is seeking an evidentiary hearing.

DATED: August 13, 2018.

Respectfully submitted,

For the United States

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

DATED: August 13, 2018

/s/ James E. Arnold
JAMES E. ARNOLD
Assistant U.S. Attorney